



SUMMARY

Uniform Limited Partnership Act (2001)

The Uniform Limited Partnership Act (ULPA) was promulgated originally in 1916, and, with the Uniform Partnership Act (UPA), has been the basic law governing partnerships in the United States. The first revision of ULPA after 1916 occurred in 1976. There were further amendments in 1985. However, changes in modern business practices made it necessary to update and modernize the ULPA beyond the 1976 and 1985 revisions. Thus, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has adopted a new, more flexible version of the Uniform Limited Partnership Act (ULPA 2001).

The previous Act, the Revised Uniform Limited Partnership Act (RULPA), set guidelines for the organization of limited partnerships, defined the rights and liabilities of both limited and general partners and provided rules for the registration of the partnership in the state of origin. The new Act does not change the basic structure of limited partnerships as defined in the original Act. But it does improve the capacity of limited partnerships both to do business and serve the best interests of partners and third parties conducting business with the partnership.

The new ULPA reflects modern business practices and represents a greater refinement of the scope and uses for limited partnerships. Modern businesses require ever-greater sophistication from the legal forms governing their practices. The new ULPA recognizes modern day uses of limited partnerships by providing greater flexibility and protection to sophisticated groups seeking strongly entrenched, centralized management and persons requiring passive limited partners with little control over the partnership.

The 2001 ULPA is a stand-alone Act, de-linked from both the original general partnership act (UPA) and the Revised Uniform Partnership Act (RUPA). Thus the ULPA 2001 incorporates many provisions from RUPA and some from the Uniform Limited Liability Company Act (ULLCA). As a result, the new ULPA is more complex and substantively longer than its predecessor.

The new Act has been drafted for a world in which limited liability partnerships (LLPs) and limited liability companies (LLCs) can meet many of the needs formerly met by limited partnerships. Therefore, the new ULPA targets two types of enterprises that are largely beyond the scope of LLPs and LLCs.

First, the ULPA 2001 includes provisions to meet the needs of sophisticated, manager-entrenched commercial deals whose participants commit for the long term. Second, the ULPA 2001 addresses the modern needs of estate planning arrangements, so-called "family limited partnerships." In addressing these concerns, this Act assumes that people utilizing it will want both strong centralized, entrenched management, and passive investors or limited partners with little capacity to exit the entity. As a result, the Act's rules, and particularly its default rules, have been designed to reflect those assumptions.

A fundamental change from RULPA involves the liability of limited partners and general partners for the partnership debts. Under RULPA, a limited partner could be held liable for the entity's debts if he participated in the control of the business and the third party transacted business with the partnership with the reasonable belief that the limited partner was a general partner. Under the new Act, a limited partner cannot be held liable for the partnership debts even if he participates in the management and control of the limited partnership. Concerning general

partners, under RULPA, liability was complete, automatic and formally inescapable. Under this Act, limited liability limited partnership (LLLP) status is expressly available to provide a full liability shield to all general partners.

Another important change concerns a limited partner's right to disassociate from the partnership. Under RULPA a limited partner could theoretically withdraw from the partnership on six months notice unless the partnership agreement specified the withdrawal events for a limited partner. Due to estate planning concerns, the new ULPA default rule affords no right to disassociate as a limited partner before the termination of the limited partnership. The power to disassociate is expressly recognized, but may be exercised only through the partnership agreement or those events listed in section 601(b) of this Act.

There are other important changes in the new ULPA. For example, under RULPA, the duration of the limited partnership must be specified in the certificate of limited partnership. Under this Act, no duration limit must be specified and the default rule now creates a perpetual entity. However, the duration is subject to change via the partnership agreement.

Also, under RULPA the use of a limited partner's name in the entity's name was prohibited except in unusual circumstances. Under the new ULPA, this restriction is eliminated. A limited partner's name may be incorporated into the business name of an entity created under this Act.

Further, under RULPA the dissolution of the partnership entity required the unanimous, written consent of all the partners. Under this Act, dissolution of the partnership only requires the consent of all the general partners and of the limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective.

RULPA has served well as the backbone of the law on limited partnerships. However, as usages change, new problems arise, and modern business practices require the law to reflect these new developments. The new ULPA now comes forward as a response to the changes that have occurred. It is the same organization, but with characteristics for today's business and estate planning conditions. Adoption of ULPA (2001) will enhance a state's business climate by adding another distinct, specific purpose entity to the list of entities available for business and estate planning purposes. It maximizes opportunity and gives more choices with economic benefit.

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